

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**DAVID MARQUAR**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO.: 1:11-CV-00054-LG-RHW**

**OFFICER CHRIS ALLEN , INDIVIDUALLY  
AND IN HIS OFFICIAL CAPACITY AS A  
DULY COMMISSIONED POLICE OFFICER  
FOR THE CITY OF WAVELAND, MS, ET AL.**

**DEFENDANTS**

---

**DEFENDANTS' MOTION FOR EXTENSION AND CONTINUANCE**

---

COME NOW, Defendants the City of Waveland, Mississippi, Chris Allen, James Varnell, and David Garcia (collectively, "Municipal Defendants"), and submit this Motion to extend the deadline by which to submit reply memoranda in support of their Motion for Summary Judgment and their Motion to Exclude Plaintiff's Expert, and to continue the dates of the pretrial conference and trial. The Municipal Defendants would show as follows:

1. Plaintiff David Marquar's responses to the Municipal Defendants' summary judgment and *Daubert* motions were originally due on November 29, 2012, along with responses to similar motions in three related taser lawsuits against the City of Waveland.<sup>1</sup> Two unopposed extensions of the response deadline were granted, but Plaintiff failed to file any responses by the new deadline of December 12th.

2. Plaintiff contacted the Municipal Defendants on January 24, 2013 requesting consent to another extension until January 31st. The Municipal Defendants opposed the request, but the Court granted the motion over their objection.

---

<sup>1</sup> Earl Seymour v. Officer Clay Necaise, et al., Civil Action No. 1:11-cv-00050-LG-RHW; Tammy Holland v. Officer Jeffrey Guillot, et al., Civil Action No. 1:11-cv-00051-LG-RHW; Blaine Hobgood v. Officer Troy Bordelon, et al., Civil Action No. 1:11-cv-00252-LG-RHW.

3. With the extension granted, Plaintiff is now due to file seven responses to the pending motions in the four related Waveland lawsuits on January 31st. This will put reply memoranda on all seven motions due on February 8th. In December 2012, undersigned counsel estimated that preparing all seven replies would require at least ten work days, and therefore cleared two weeks of his calendar. At this point, it is impossible for counsel to clear the needed time due to multiple prior obligations in February, including two pending appellate briefs, depositions, and a Fifth Circuit oral argument scheduled for February 5th.

4. Consequently, the Municipal Defendants respectfully request an extension up to and including March 1, 2013 to file reply memoranda in support of their summary judgment and *Daubert* motions in this and the three related Waveland taser lawsuits.

5. Further, Plaintiff's long delay in responding will result in the Court having only an abbreviated time to consider the pending motions. The pretrial conferences in the four Waveland taser lawsuits are set for April 17, 2013, and June 19, 2013. Municipal Defendants therefore request that trial and the pretrial conference in this matter be continued to dates that will allow the Court adequate time to consider and decide the pending motions in this and the three related Waveland taser lawsuits.

6. Municipal Defendants have contacted Plaintiff's counsel about these requests and as yet have not received any response. This motion is not being made for purposes of harassment or delay, but to give Municipal Defendants adequate time to prepare reply memoranda in support of their pending motions.

7. Given the straightforward nature of this response, Municipal Defendants request that the Court waive the requirement of a separate memorandum of law.

THIS, the 30<sup>th</sup> day of January, 2013.

Respectfully submitted,

**PHELPS DUNBAR, LLP**

BY: /s/ W. Brett Harvey

Gary E. Friedman, MS Bar No. 5532  
W. Brett Harvey, MS Bar No. 102440  
PHELPS DUNBAR LLP  
4270 I-55 North  
Jackson, Mississippi 39211-6391

Post Office Box 16114  
Jackson, Mississippi 39236-6114  
Telephone: 601-352-2300  
Telecopier: 601-360-9777  
Email: friedmag@phelps.com  
brett.harvey@phelps.com  
**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I, BRETT HARVEY, do hereby certify that I have filed the foregoing *MOTION* via the CM/ECF system, which provided an email notice to the following individuals:

Bobby W. Moak  
LAW OFFICE OF BOBBY MOAK, PC  
402 Monticello Street  
P.O. Box 242  
Bogue Chitto, MS 39629  
(601) 734-2566  
bmoak@locnet.net

***ATTORNEY FOR PLAINTIFF***

SO CERTIFIED, this the 30<sup>th</sup> day of January, 2013.

/s/ W. Brett Harvey

W. BRETT HARVEY